

REMARKS/ARGUMENTS

At present, claims 1-22 are pending in the above-identified U.S. patent application and currently stand rejected. Based on the following remarks and amendments to the claims, reconsideration of the application is hereby requested.

On page 2 of the Office Action, the Examiner outlines a rejection of claims 1-22 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. With respect to claims 1-10, the Examiner indicates that the phrase “the level of sound” lacks proper antecedent basis. Thus, in order to correct a minor typographical error, the phrase has been changed to “a level of sound”. With regards to claims 4-6, the Examiner indicates that the phrase “horizontal top surface” lacks proper antecedent basis and thus the phrase been amended to recite the “horizontally extending top portion”. In addition, the phrase the “bottom edge portion” has been amended to remove the word “edge” in order to provide proper antecedent basis. The dependency of claims 4-6 have been changed from claim 2 to claim 3. Claim 9 has been amended to remove the word “edge” to provide proper antecedent basis for the bottom portion and an “a” has been inserted in place of the “the” prior to the phrase “sealing surface” to correct a minor typographical error. Claim 16 has also been amended to delete the word “edge” to provide proper antecedent basis for the bottom portion of the door.

The Examiner also indicates that the phrases “substantially lower” and “significantly reduced” are relative terms lacking proper comparative basis. It is respectfully submitted that this rejection be withdrawn. The M.P.E.P. clearly states in § 2173.02 that the mere use of various phrases, in particular “significantly”, does not by itself render a claim indefinite. The test for definiteness under 35 U.S.C. § 112, second paragraph, is whether those skilled in the art would understand what is claimed when the invention is read in light of the specification. Accordingly, the Applicant directs the Examiner’s attention to page 10, line 15 of the specification in which the present invention is described as being employed to prevent or at least significantly limit, sound

emanating through a gap 140 between sound tray 130 and door 36. In addition, on page 14, lines 13-20, the specification describes that the present invention provides a seal arrangement which closes off that region, i.e., the gap, to advantageously lower the overall sound emanating from the dishwasher. With the gap being closed off or sealed, a more quiet environment is established during operation of the dishwasher. Therefore, the Applicant submits that, when read in light of the specification as required, these phrases do not render the claim indefinite.

Finally, in yet another formal rejection, the Examiner indicates that claims 1-19 are indefinite as the term "the attenuating means" in claim 12 lacks proper antecedent basis and likewise, the term "attenuating means" in claims 20-22 lacks proper antecedent basis. This is not seen to be the case. Claim 12 depends from claim 11 which clearly sets forth means for attenuating sound escaping from the dishwasher. Likewise, claim 20 depends from claim 11 which clearly provides antecedent basis for the phrase "the attenuating means". With respect to claim 21, the word "dishwasher" was deleted in order to remove any confusion and ensure that the phrase "attenuating means" has proper antecedent basis.

On page 3 of the Office Action, the Examiner outlines a rejection to claims 1-22 under 35 U.S.C. § 102(b) as being anticipated by Kaldenberg (U.S. Patent No. 3,529,881). This rejection is respectfully traversed. In general, the present invention is directed to a sound sealing system for a dishwasher. The dishwasher includes a door having a bottom portion that is pivotally mounted relative to a frontal frame for selectively sealing a front opening of a tub. A sound tray extends across the frontal frame below the bottom portion of the door. The sound tray includes a first edge portion which is spaced from the bottom portion of the door so as to define a gap. A flexible seal, which is connected to one of the door and sound tray, extends across the gap between the sound tray and the bottom portion of the door in order to substantially lower a level of sound generated by mechanical components during a washing operation. These limitations are set forth in claim 1. Claim 11 describes the sound tray and flexible seal in means-plus-function form as requiring means for attenuating sound escaping from the

dishwasher during a washing operation with attenuating means that extends across a frontal frame at a bottom portion of a door of the dishwasher to significantly reduce a level of sound generated by the dishwasher during a washing operation.

Kaldenberg discloses a dishwasher including a stabilization panel 20 that prevents an appliance from tipping forward when an unbalancing force is applied. While the stabilization panel 20 is described as being formed from a sound deadening material, the Applicant submits that the particular arrangement in Kaldenberg is quite distinct from that of the present invention. A claim is anticipated only if each and every element set forth in the claim is disclosed, expressly or inherently, in a single prior art reference. Kaldenberg at least fails to teach that the flexible seal extends across a gap between a sound tray and the bottom portion of the door. While stabilization panel 20 in Kaldenberg certainly covers the gap, it never extends between a sound tray and the bottom portion of the door of the dishwasher. As a matter of fact, the stabilization panel actually covers the entirety of the outer surface of the door. Thus, the Applicant respectfully submits that Kaldenberg cannot properly anticipate claim 1. As claim 9 is presented in means-plus-function term, the Examiner is required to look to the specification for what is described. More particularly, MPEP § 2183 clearly states that “the application of a prior art reference to a means or step plus function limitation requires that the prior art element perform the identical function specified in the claim...”, while the claim language is interpreted “consistent with the specification disclosure.” The arrangement in Kaldenberg is quite different from that disclosed by the present invention and, thus, claim 9 is not properly anticipated.

With regard to the particular construction of the sound tray, the Examiner indicates that the sound tray can be interpreted as different combinations of parts 17, 24 and 33. It is respectfully submitted that this is an unreasonable interpretation of the claimed subject matter. In accordance with the present invention, the sound tray extends across the frontal frame below the bottom portion of the door and has a first edge portion which is spaced from the bottom portion of the door so as to define a gap between the sound tray and the bottom portion of the door. Even broadly construing part 17 as a

sound tray, part 24 which defines a mechanical fastener or part 33 which defines a portion of the panel 20 certainly cannot be construed as part of the sound tray.

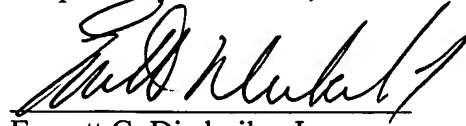
Many of the dependent claims provide particular advantageous constructions for the sound tray. For example, claims 2 and 14 require that the sound tray be substantially L-shaped in cross section. Claim 3 further defines the sound tray as including a horizontally extending top portion. Claims 7 and 17 require that the sound tray is substantially Z-shaped in cross section. Kaldenberg fails to teach any of these particular sound tray constructions.

In addition, claim 21 adds a control mechanism interconnected to the door wherein the attenuating means further includes an actuating member interconnected between the sound tray and the control mechanism. No such corresponding structure is found in Kaldenberg. Claim 22 adds that the control mechanism includes a cable, with the actuating member having a first end pivotally attached to the sound tray and a second end attached to the cable. Again, Kaldenberg fails to teach any such arrangement. Furthermore, Kaldenberg fails to teach engaging a flexible seal against a terminal flange section of the door as required by claims 5 and 16, or that the sound tray be pivotally attached to a bottom portion of the door as required by claim 20.

Based on the remarks and amendments to the claims, it is respectfully submitted that the formal rejections have been overcome and the present invention is patentably defined over the prior art of record such that allowance of all claims and passage of the application to issue are respectfully requested. If the Examiner should have any

additional questions or concerns regarding this matter, he is cordially invited to contact the undersigned at the number provided below in order to further prosecution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Everett G. Diederiks, Jr.", written over a horizontal line.

Everett G. Diederiks, Jr.
Attorney for Applicant
Reg. No. 33,323

Date: December 22, 2006
DIEDERIKS & WHITELAW, PLC
12471 Dillingham Square, #301
Woodbridge, VA 22192
Tel: (703) 583-8300
Fax: (703) 583-8301